

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

BKY 10-30513

Frank W. and Roxanne S. DiMartino,

Debtors.

John A. Hedback, Trustee,

ADV _____

Plaintiff,

vs.

COMPLAINT

Kath Fuel Oil Service Co.,

Defendant.

TO: Kath Fuel Oil Service Co., 3096 North Rice Street, Little Canada, Minnesota 55113.

Plaintiff, for his cause of action and prayer for relief states:

I. JURISDICTION

1. On January 28, 2010, a petition for relief was filed under Chapter 7 of the Bankruptcy Code by Frank W. and Roxanne S. DiMartino (Debtors), thereby commencing the above-referenced bankruptcy case.

2. John Hedback (Trustee) was appointed trustee of the Chapter 7 bankruptcy estate.

3. The Court has jurisdiction over this adversary proceeding pursuant to Sections 157 and 1334 of Title 28 of the United States Code and Bankruptcy Rule 7001.

4. Venue of this adversary proceeding is appropriate in this Court pursuant to Section 1409 of Title 28.

5. This adversary proceeding arises under Sections 548 and 550 of the U.S. Bankruptcy Code. This is a core proceeding pursuant to Section 157 of Title 28. This complaint is filed under Bankruptcy Rule 7001 and Local Rule 901.

II. FACTUAL ALLEGATIONS

6. Debtor Frank W. DiMartino operated two businesses throughout 2009; Frank's University Service, Inc., a Minnesota corporation located at 1625 Como Ave. SE and Frank's Auto Repair, as a sole proprietorship located at 2314 E Hennepin Ave.

7. As of May and July 2009, the Debtor's sole proprietorship had an ownership interest in the \$2,668.04 funds.

8. The Debtor's sole proprietorship transferred the sum of \$2,668.04 to Defendant in two separate transfers; the first \$2,000.00 on May 11, 2009, and the second \$668.04 on July 10, 2009.

9. The transfer of the funds constitutes a transfer of an interest of the Debtors in property since the Debtors own all assets of the sole proprietorship individually.

10. The transfer of the funds occurred on or within two years before the date of the bankruptcy filing.

11. Since the funds were transferred by Debtor's sole proprietorship to satisfy the debt incurred by the corporation, the Debtors received nothing in exchange for the transfer of funds. Therefore, the Debtors received less than reasonably equivalent value in exchange for such transfer.

12. Based on a review of the bankruptcy schedules, the Debtors were insolvent on the dates the transfers were made.

III. COMPLAINT

12. Plaintiff realleges and incorporates herein the allegations of paragraphs 1 through 12.

14. The Debtors had an ownership interest in funds in the sum of \$2,668.04.

15. The Debtors transferred to Defendant said funds.

16. Said transfer constitutes a transfer of interest of the Debtors in property.

17. Said transfer occurred on or within 2 years before the date of the bankruptcy filing.

18. Debtors received less than reasonably equivalent value in exchange for such transfer.

19. The Debtors were insolvent on the date the transfer was made.

20. Plaintiff requests an order avoiding the transfer of the \$2,668.04 funds pursuant to Section 548 of the Bankruptcy Code.

21. Plaintiff requests and order recovering the \$2,668.04 funds for the benefit of the bankruptcy estate pursuant to Section 550 of the Bankruptcy Code.

WHEREFORE, Plaintiff requests an order;

(A) Avoiding the transfer to Defendant of the sum of \$2,668.04 pursuant to Section 528 of the Bankruptcy Code;

(B) Recovering the value of \$2,668.04 for the benefit of the bankruptcy estate pursuant to Section 550 of the Bankruptcy Code;

(C) Adjudging Defendant liable to the bankruptcy estate for the sum of \$2,668.04;

(D) Granting judgment in favor of the Plaintiff for his attorneys' fees and costs; and

(E) Granting any other relief the Court deems just and proper.

Hedback, Arendt, Kohl & Carlson, PLLC

Dated: January 5, 2011

_____/s/John A. Hedback_____
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